

THE MARTHA'S VINEYARD COMMISSION

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Minutes of the Meeting of April 15, 2004

Held in the Stone Building,
33 New York Avenue, Oak Bluffs, MA

IN ATTENDANCE

Commissioners: James Athearn (Elected - Edgartown), John Breckenridge (Appointed - Oak Bluffs), Christina Brown (Elected - Edgartown), Linda DeWitt (Appointed - Edgartown), Jane A. Greene (Appointed - Chilmark), Katherine Newman (Appointed - Aquinnah) [arrived 7:50 p.m.], Ned Orleans (Appointed - Tisbury), Linda Sibley (Elected - West Tisbury), Paul Strauss (County Comm. Rep.), Richard Toole (Elected - Oak Bluffs), Andrew Woodruff (Elected - West Tisbury)

Staff: Jo-Ann Taylor (DRI Analyst), Mark London (Executive Director), Bill Veno (Senior Planner)

1. OPTIONS IN EDUCATION (M.V. PUBLIC CHARTER SCHOOL): DRI 423M-5 - CONCURRENCE REVIEW / MODIFICATION VOTE

Commissioners present: J. Athearn, J. Breckenridge, C. Brown, L. DeWitt, J. Greene, N. Orleans, L. Sibley, P. Strauss, R. Toole, A. Woodruff

For the applicant: Bruce MacNelly, architect

Architect **Bruce MacNelly** presented the plan for an addition to the Charter School:

- The trailer that has housed the kindergarten will be removed.
- A 750-square-foot addition, about a 7% increase in total square footage, will be built, sited about 450 feet from the road.
- No increase in enrollment or staff is called for.
- The structure will be post and beam and won't exceed the height of the existing building.
- The site has a green belt buffer between the building and the road. A 150-foot no-build zone exists around the well. The only cleared areas are the parking lot and soccer field.

- The septic is to be upgraded. The original septic was for 150 students but Title 5 has become stricter; the 2,500-gallon tank may need to be upgraded to 3,000 gallons and the pits will be inspected. Ernie Mendenhall said the Board of Health would oversee the septic regulations and plan; the Commission should be able to act on the modification without the septic plan.
- The Charter School population is steady between 152-159 students. The high school population could increase slightly, but K-8 is full.

Jane Greene asked whether this is the final phase of building. **Bruce MacNelly** said this is not the last plan they could imagine. The Master Plan has included a gym, but realistically only a small addition might be proposed.

Christina Brown reported that the LUPC voted unanimously to recommend that the plan is a modification that does not require a full public hearing, and should be referred back to the building inspector.

Paul Foley reported that Commission documents show the history of decisions and conditions, including concerns about the septic. Plans submitted between 1990 and 1998 show increases in students. No increases were indicated on plans submitted since then. **Bruce MacNelly** said that population is a Board of Health issue because the design load for the septic system is based on actual numbers.

Jane Greene moved and it was duly seconded to not concur with the referral from the West Tisbury Building Inspector recognizing that the building will be able to accommodate up to 180 persons due to the anticipated septic upgrade. A voice vote was taken. In favor: 10. Opposed: 0. Abstentions: 0. The motion carried.

Linda Sibley moved and it was duly seconded to accept the modifications as submitted, recognizing that the septic system will be upgraded according to Board of Health specifications. A voice vote was taken. In favor: 10. Opposed: 0. Abstentions: 0.

Katherine Newman arrived at 7:50 p.m.

2. TROPICAL DELI: DRI NO. 571M – CONCURRENCE REVIEW/POSSIBLE MODIFICATION VOTE

Commissioners present: J. Athearn, J. Breckenridge, C. Brown, L. DeWitt, J. Greene, K. Newman, N. Orleans, L. Sibley, P. Strauss, R. Toole, A. Woodruff

For the applicant: Antonio Silva

The applicant presented his plan for opening a breakfast and lunch deli at 266 Upper Main Street in Edgartown.

- The property is 400 square feet.

- Plans call for a full kitchen.
- The building is hooked up to town water and sewer.
- Service will be take-out with a few tables. No tables will be on the deck; the deck has a bench and serves as the entrance to the building.
- The food served will not be in competition with the adjacent Mexican restaurant. The menu may be expanded in the off-season when the Mexican restaurant is not open.

Christina Brown reported on the LUPC discussion about traffic in the area. The Commission has done traffic counts in the area three times in the last decade at the request of the Edgartown Police Chief. The total number of cars passing by has not increased in the last decade, although the perception is that traffic is moving more slowly. The Edgartown Planning Board will be working with Police Chief on making small adjustments to the traffic pattern to improve the flow.

James Athearn explained the letter from the Edgartown Planning Board that advises that the Commission not consider the project as a DRI; their master plan process for Upper Main Street gives them the opportunity to make requirements regarding various aspects of a proposal like this one.

Richard Toole gave the LUPC report. Based on the testimony of one of the Edgartown Planning Board members, LUPC felt that the Planning Board should deal with the proposal and voted to recommend not to concur with the referral of the project as a DRI.

Jane Greene moved and it was duly seconded to not concur with the referral of the project as a DRI. A voice vote was taken. In favor: 11. Opposed: 0. Abstentions: 0. The motion carried.

3. THE PRESERVE AT THE WOODLANDS/SOUTHERN WOODLANDS RESERVATION: DRI NO. 555-2 - PROPOSED SUBDIVISION - ADOPTION OF WRITTEN DECISION

Commissioners present: J. Athearn, J. Breckenridge, C. Brown, L. DeWitt, J. Greene, K. Newman, N. Orleans, L. Sibley, P. Strauss, R. Toole, A. Woodruff

For the applicant: Brian Lafferty, developer's representative

The Commission reviewed the latest copy of the Commission's proposed decision and conditions.

Linda Sibley moved and it was duly seconded to accept the decision of the Martha's Vineyard Commission dated 4/15/04 as written.

The Commission made the following modifications to the draft decision.

- Page 3, paragraph 3 should read '*significantly*'.
- Page 4, paragraph 5: should read 'includes a mix of'.
- Page 6, paragraph 1: the following sentence should be reinserted '*The proposal will leave intact much of the woodland habitat of the Southern Woodlands, a habitat that can accommodate rare interior and forest dwelling species.*'
- Page 6, paragraph 1: an extra '*the*' should be removed so the sentence reads '*The proposal considers and protects most of the woodland resources on the site.*'
- Page 6, paragraph 4 should end after the words 'enjoy in perpetuity.'
- Page 6, paragraph 5 should read 'has a positive impact'.
- Pages 1 – 14 should read '*Commonwealth*'.
- Page 12, condition 1 the Commission to give Mark London license to edit condition 1 for clarification of the intent.
- Page 12 and 13, the numbering was corrected.
- Page 12, condition 2, the word '*Commission*' was added.
- Page 12, condition 2: The Commission agreed to remove the words '*and the total area of publicly accessible open space on the entire property is not reduced.*' The Commission discussed the removal of the words and agreed that because minor adjustments are subject to approval by LUPC and because the total area of publicly accessible open space may be reduced under certain circumstances, the removal of the final part of condition two was necessary and acceptable.
- Page 12, condition 4 should end after the words 'and be covered'.
- Page 13, condition 8: the last sentence should read '*or as required*'.
- Page 13, condition 11: The Commission discussed the condition and its intent. The Commission agreed to reword condition 11 to read '*As offered by the Applicant, if requested by the Land Bank, there shall be an easement of passage on the open space parcel adjacent to parcel F, identified on the March 19, 2004 plan, in favor of the Martha's Vineyard Land Bank and its invitees.*'
- Page 13, condition 13, the condition should end after '*the Land Bank*'.

Jane Greene moved and it was duly seconded to accept the written decision as corrected. A roll call vote was taken. In favor: J. Athearn, J. Breckenridge, C. Brown, L. DeWitt, J. Greene, K. Newman, N. Orleans, L. Sibley, P. Strauss, R. Toole, A. Woodruff. Opposed: None. Abstentions: None. The motion carried.

4. CHARITABLE CONTRIBUTIONS

Commissioners present: J. Athearn, J. Breckenridge, C. Brown, L. DeWitt, J. Greene, K. Newman, N. Orleans, L. Sibley, P. Strauss, R. Toole, A. Woodruff

Mark London presented background on the issue of charitable donations. A public hearing had been held on the question of grants, gifts, or contributions made directly to the Commission or through a blind trust. He presented a possible motion for discussion to deal with clarification of policies for direct gifts.

Linda Sibley moved and it was duly seconded:

1. *To authorize the Executive Director to receive all unconditional grants and donations to the Martha's Vineyard Commission up to a value of \$500, and require that any other grant or donation be presented to the full Commission for individual approval before it is accepted.*
2. *That the Commission not accept gifts from entities eligible to make an application for development projects to the Commission unless the donor signs a statement under pains of perjury to the effect*
 - *that the Martha's Vineyard Commission is not currently reviewing any application filed by them or any entity with which they are associated for a development permit authorizing them or any such entity to construct, offer, or improve any buildings or land located on Martha's Vineyard nor does the donor have a direct financial interest in the outcome of a decision on a development permit, for example abutters or competitors.*
 - *That the donor does not now or in good faith anticipate submitting an application for a development permit which might be subject for review by the Martha's Vineyard Commission during the next 24 months.*
 - *that the donor has not communicated with the Martha's Vineyard Commission during the three months prior to making the contribution regarding any matter, regarding a DRI or DCPC before the Martha's Vineyard Commission for decision.*

Jane Greene suggested that the third bullet read '*during the three months prior to and three months after*'.

Mark London said that Eric Wodlinger, counsel, had concern about freedom of speech issues and limiting potential donor's communication with the Commission.

Katherine Newman expressed concern about donors not being able to anticipate issues that may affect them.

Jane Greene stated that it is easier not to accept a donation than being in the position of having to make a decision to return one because of the appearance of donors trying to influence the Commission's decisions.

Linda Sibley said she doesn't want to limit people's freedom of speech, but is concerned that three months is not enough time. The Commission should look very carefully at what constitutes a major donation.

Mark London explained that the first possible motion applies only to unconditional grants up to \$500 and gives the Executive Director authority to accept those grants and donations.

Linda Sibley said she believed that people should be able to make small donations without giving up their freedom of speech. She suggested that \$500 should be the cap for 'small donations'.

Linda DeWitt suggested that the Commission ask for guidance from the State Ethics Commission. **Mark London** said that Eric Wodlinger explained that the Ethics Commission focuses on personal conflicts of interest. An issue such as donation to the Commission wouldn't be in their purview. **Jane Greene** suggested that the Ethics Commission might have some advice. **Ned Orleans** suggested that **Mark London** ask other Massachusetts commissions or similar agencies whether they have donation policies.

Jane Greene suggested that the Massachusetts Municipal Association might be able to assist the Commission with developing a policy for donations.

Linda DeWitt asked whether Commissioners are allowed to give donations to the Commission they may be serving on.

Ned Orleans said he believes that the Commission is dealing with neither a legal issue nor an ethical issue but an issue of perception. He asked whether the Commission is contemplating putting the policy, when it's arrived at, to a public hearing.

Richard Toole said that no one is going to want to donate money if they have to give up their rights. The \$500 is a good starting point.

Linda Sibley said she is comfortable moving on the first motion; the second motion needs to be looked at more carefully. The second motion sounds like legal speak; the policy needs to be worded differently even if it is trying to accomplish the same goals.

John Breckenridge said that he feels that \$500 is a low plateau, objective type number. But he stated that the cap should read \$500 per individual or organization.

The Commission agreed up to \$500 could be accepted by the Executive Director for unconditional grants and donations.

A voice vote was taken on the motion to authorize the Executive Director to accept all unconditional grants and donations up to \$500 per individual or organization. In favor: 11. Opposed: 0. Abstentions: 0.

James Athearn said that the Commission seems to be at consensus that it needs to gather more information and do some more thinking on the second motion. **Linda Sibley** reiterated that staff be in touch with the Massachusetts Municipal Association. Additionally, a recent court finding suggested that it was inappropriate for towns to take gifts from developers in exchange for approval of their projects. The court finding might have language that the Commission could use.

Jim Athearn suggested that a committee be formed to look at the donation policy. **Linda Sibley, Richard Toole, and Ned Orleans** agreed to be on the committee.

The Commission recessed from 9:11 p.m. to 9:24 p.m.

5. OTHER

Commissioners present: J. Athearn, J. Breckenridge, C. Brown, L. DeWitt, J. Greene, K. Newman, N. Orleans, L. Sibley, P. Strauss, R. Toole, A. Woodruff

5.1 New Staff

Mark London introduced Srinivas Sattoor, the new transportation planner. He has a recent master's degree from the University of Louisiana, Lafayette, and worked in the Berkshires Regional Planning Commission. He is currently working on compiling all the past traffic counts. Staff is developing a computer demand model.

5.2 Lagoon Pond Drawbridge

The Commission was asked by the Oak Bluffs and Tisbury Selectmen to form a committee to look at the Lagoon Pond Drawbridge. The committee has come out with a preliminary report that, after deep analysis and long discussion, reluctantly recommends in favor of a temporary drawbridge. There will be a public hearing to elicit comment before the report is finalized. The report is available on *The Gazette* website.

- The bridge towers of the temporary bridge are approximately 75 feet high, the height of a six- to seven-story building, and will be in place as long as six years.
- A major concern of the committee is getting a guarantee that planning, funding and construction of the replacement bridge will be expedited and that the temporary bridge will not remain in place for a longer time than planned.
- The committee relatively quickly came to the conclusion that Beach Road had to stay open other than for brief periods off-season – that Martha's Vineyard could not take the risk that Beach Road could be closed for years or even for a month or two in the summer.
- The committee agreed that there is a real risk that the old bridge would not last six to eight years as the permanent bridge is built.
- Should the bridge fail, the Coast Guard would not likely allow leaving the bridge in the down position due to safety issues with Lagoon Pond being a 'harbor of refuge'.
- To avoid building the temporary bridge, a permanent bridge would have to be built in a different location than the existing bridge.

Mark London said that the committee will be holding a public hearing to receive comments and questions on issues such as traffic, safety, boating, fire access, structure.

Linda Sibley said that this is the kind of arcane thing that people don't pay attention to until the last minute. With the benefit of MVTv, people might be able to understand what the bridge will look like. She also asked how Mass Highway would ensure that the temporary bridge wouldn't become permanent.

John Breckenridge asked whether Mass Highway has a definite budget for the new permanent bridge.

5.3 Deborah Moore, Commission Member at Large

Mark London announced that Deborah Moore, Commission Member at Large, has resigned from the Commission because she has moved to California. The Aquinnah Planning Board will need to find a replacement.

6. PUBLIC FORUMS

A series of forums on the future of Martha's Vineyard has been planned to celebrate the 30-year anniversary of the Commission. The titles are still under discussion. The first three, in cooperation with the all-Island Selectmen, are:

- May 19th @ 7:30 - Smart Growth on the Vineyard: How can we make sustainable development work on the Island?
- June 23rd @ 7:30 - The View from the Road: How can we preserve our rural roadsides?
- July 21st @ 7:30 - The Changing Vineyard Economy: How should we prepare for the big changes ahead?
- The last forum in August will be on a water related issue. Details should be finalized shortly.

7. LUPC MEETINGS

Wednesday, May 5th at 5:30 p.m. Pennywise Path Site Visit; rain date the following week.

Christina Brown explained that LUPC had begun revising the checklist on defining a DRI. The Committee agreed to look anew at regional impact projects on the Island. She suggested that the Commission take a list of the DRIs and break them out by town to discuss with the all-Island Planning Boards and Conservation Commissions. The Committee also discussed visiting DRIs around the island to see how past DRIs have worked out. **Christina Brown** also suggested for members who are on planning boards to discuss the topic of definition and impact of DRIs with their boards.

7. ADOPTION OF MINUTES

Commissioners present: J. Athearn, J. Breckenridge, C. Brown, L. DeWitt, J. Greene, K. Newman, N. Orleans, L. Sibley, P. Strauss, R. Toole, A. Woodruff

Corrections to the minutes of February 19, 2004:

- page 2, line 13: change 'approved' to 'recommended'
- pages 2 through 6: Coleman Subdivision: references to possible conditions should be made clear by including conditions in minutes.
- pages 6 through 8: Bridge Housing: remove J. Greene from modification concurrence discussion and vote.

Jane Greene moved and it was duly seconded that the minutes of February 19th be approved with corrections. A voice vote was taken. In favor: 9. Opposed: 0. Abstentions: 2. The motion carried.

Corrections to the minutes of March 11, 2004:

- page 1 and throughout: remove J. Greene from attendance
- pages 3 through 6: B.A.D.D. Company: remove J. Athearn from discussion and vote

Christina Brown moved and it was duly seconded to approve the minutes of March 11th with corrections. A voice vote was taken. In favor: 7. Opposed: 0. Abstentions: 4. The motion carried.

8. 30th ANNIVERSARY COMMEMORATION

James Athearn asked for ideas on ways that the Commission could commemorate its 30th anniversary.

Linda DeWitt suggested getting all the Commissioners, past and present, together.

Jane Greene said that at the 20th anniversary, past and present staff and commissioners had a dinner at the Harbor View at Christmastime.

Linda DeWitt suggested a brief history of the thirty years could be published in the newspaper.

Linda Sibley said she would like to see a public celebration outside on July 27th, the actual anniversary date, with past and present commissioners and staff and the public.

Jane Greene suggested that former commissioners could write about their experiences on the Commission and the decisions they were involved in.

Katherine Newman said she liked involving the public on the actual anniversary day. Maybe a smaller and more reflective off-season gathering could be planned as well.

Linda DeWitt suggested a film evening of past Vineyard events, like the Thanksgiving Day horse race and a 4th of July parade from Edgartown. The Commission also has the implosion of the Seaview. **Mark London** suggested that MVTV might be interested in showing the films.

The Commissioners agreed to think more on the ideas and revisit the topic as a group and perhaps as a smaller committee.

The meeting adjourned at 9:55 p.m.

Chairman

Date

Clerk-Treasurer

Date